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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 LOUIS GUERRA, JR.,

16 Case No. C-07-3343 MJJ

17 Plaintiff,

18 v.  
19 NETFLIX,  
20 Defendant.  
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**NOTICE OF MOTION AND  
DEFENDANT NETFLIX, INC.'S  
MOTION FOR INTRADISTRICT  
TRANSFER TO SAN JOSE DIVISION;  
AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION**

[Fed.R.Civ.Proc. 12(b)(3); Civil L.R. 3-  
2(c), (e), (f)]

25 Hearing Date: 10/2/2007  
26 Hearing Time: 9:30 a.m.  
27 Courtroom: 11

28 Complaint filed: June 26, 2007

No Trial Date Set

**NOTICE OF MOTION AND DEFENDANT NETLIFX, INC.'S MOTION  
FOR INTRADISTRICT TRANSFER TO SAN JOSE DIVISION**

**TO PLAINTIFF PRO SE:**

PLEASE TAKE NOTICE THAT on October 2, 2007, at 9:30 a.m., or as soon thereafter as may be heard, in Courtroom 11 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California, Defendant NETFLIX, INC., appearing for purposes of this motion, will move this Court for an order transferring this matter from the San Francisco Division of the Northern District Court of California (“San Francisco Division”) to the San Jose Division of the Northern District Court of California (“San Jose Division”).

Defendant NETFLIX, INC. brings this motion for intradistrict transfer pursuant to Fed.R.Civ.Proc. 12(b)(3) and Civil Local Rule 3-2 (c), (e) and (f), based on grounds that this action was improperly filed in the San Francisco District and should have been assigned to the San Jose Division, within the Northern District Court of California.

This motion is based on this Notice and Memorandum of Points and Authorities, the declaration of Charlotte Falla (concurrently filed herewith), and all records and pleadings on file, and on such oral and documentary evidence that may be presented at the hearing.

Dated: August 17, 2007

Respectfully Submitted,

JACKSON LEWIS LLP

By:

Bradley W. Kampas  
Cara Ching-Senaha  
Attorneys for Defendant  
NETFLIX, INC.

1                   **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
 2                   **DEFENDANT NETFLIX, INC.'S MOTION FOR**  
 3                   **INTRADISTRICT TRANSFER TO SAN JOSE DIVISION**

4                   **I. INTRODUCTION**

5                   Pursuant to Northern District of California Civil Local Rule 3-2(c) and (e), "all civil  
 6                   actions and proceedings" that arise in the county of Santa Clara "shall be assigned" to "the San  
 7                   Jose Division." L.R. 3-2(c), (e) (emphasis added).

8                   "A civil action arises in the county in which a substantial part of the events or omissions  
 9                   which give rise to the claim occurred..." L.R. 3-2(c).

10                  A Judge on his or her own motion, or on the motion of any party, may order such transfer  
 11                  consistent with L.R. 3-2(c), (e). L.R. 3-2(f).

12                  Plaintiff LOUIS GUERRA alleges a single claim for relief, for employment  
 13                  discrimination under Title VII of the Civil Rights Act of 1964. Employment Discrimination  
 14                  Complaint ("Cplt.") at ¶ 3. He alleges that Defendant NETFLIX, INC. discriminated against him  
 15                  when it terminated his employment. Cplt. at ¶ 4. He alleges that he worked for Defendant in  
 16                  Sunnyvale, California. Id. at ¶ 2. In addition, Plaintiff lives in San Jose. Id. at ¶ 1. Defendant  
 17                  NETFLIX's headquarters is located in Los Gatos, California. Declaration of Charlotte Falla,  
 18                  concurrently filed herewith.

19                  Despite the fact that the alleged discrimination occurred in the County of Santa Clara,  
 20                  where NETFLIX does business and where Plaintiff worked, Plaintiff filed suit not in the San Jose  
 21                  Division of this Court, but in the San Francisco Division.

22                  NETFLIX respectfully submits that this matter is not properly assigned to the San  
 23                  Francisco Division. Fed.R.Civ.Proc. 12(b)(3); L.R. 3-2(c), (e), (f). This matter should be  
 24                  transferred to the San Jose Division: (1) because San Jose Division is the proper division; and (2)  
 25                  for the convenience of the parties and to promote the ends of justice.

**II. THIS MATTER SHOULD PROCEED IN THE SAN JOSE DIVISION OF THE NORTHERN DISTRICT OF CALIFORNIA BECAUSE THAT IS WHERE THE ALLEGED CLAIM AROSE.**

This Court's Assignment Plan states, in relevant part:

upon initial filing, all civil actions and proceedings for which this district is the proper venue shall be assigned by the Clerk to a Courthouse serving the county in which the action arises.

L.R. 3-2(c) (emphasis added).

Subject to exceptions inapplicable to this case (e.g., intellectual property actions, capital and noncapital prisoner petitions, etc.), “[a] civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.” L.R. 3-2(c).

Plaintiff alleges that he worked for NETFLIX in Sunnyvale, California. Cplt. at ¶ 2. Therefore, this matter arises in Santa Clara County. L.R. 3-2(c).

“Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be assigned to the San Jose Division.” L.R. 3-2(e) (emphasis added). Inexplicably, Plaintiff filed his complaint in San Francisco and this matter was not assigned to the San Jose Division.

Whenever a Judge finds, upon the Judge's own motion or the motion of any party, that a civil action has not been assigned to the proper division within this district in accordance with this rule,...the Judge may order such transfer, subject to the provisions of the Court's Assignment Plan.

L.R. 3-2(f).

Pursuant to L.R. 3-2(f) and the Court's Assignment Plan, *supra*, NETFLIX moves this Court to summarily transfer this matter to the San Jose Division for all further proceedings.

1       **III. THIS MATTER SHOULD BE TRANSFERRED TO THE SAN JOSE DIVISION  
2                  FOR THE CONVENIENCE OF THE WITNESSES AND TO PROMOTE THE  
3                  ENDS OF JUSTICE**

4                  As a separate and distinct basis for transfer, Local Rule 3-2(f) provides for intra-district  
5 transfers for “the convenience of parties and witnesses and [when] the interests of justice will be  
6 served by transferring the action to a different division within the district...”

7                  Here, GUERRA lives in San Jose. Cplt. at ¶ 1. In addition, the Complaint refers to four  
8 witnesses, all of whom allegedly worked in NETFLIX’s Sunnyvale facility. *See, e.g.*, Cplt. at ¶¶  
9 4, 5. In addition, NETFLIX’s headquarters is located in Los Gatos, California. Declaration of  
10 Charlotte Falla, concurrently filed herewith.

11                 Therefore, Santa Clara County plainly is the most convenient and appropriate forum for  
12 the parties and witnesses.

13                 The ends of justice would also be served by holding the trial in this matter in Santa Clara  
14 County, where the events are alleged to have occurred and where the parties’ and witnesses’  
15 involvement occurred. Travel and time costs would be less, resulting in a more efficient trial.  
16 Therefore, the burden on witnesses will be less if the matter is transferred to the San Jose  
17 Division.

18                 For this reasons, it would serve the interests of justice and the convenience of the parties  
19 to transfer Plaintiff’s claim to the San Jose Division.

20       **IV. CONCLUSION**

21                 This Court’s Assignment Plan, Civil Local Rules 3-2(c), (e) and (f), convenience of the  
22 parties and witnesses, and interests of justice all require that this matter proceed where Plaintiff is  
23 alleged to have worked, where the alleged discrimination is claimed to have occurred, where  
24 Plaintiff lives, and where NETFLIX is located – the County of Santa Clara.

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Accordingly, NETFLIX moves this Court to transfer this matter from the San Francisco Division of the Northern District of California to the San Jose Division of the Northern District of California.

Dated: August 17, 2007

Respectfully Submitted,

JACKSON LEWIS LLP

By: Bradley W. Kampas  
Bradley W. Kampas  
Cara Ching-Senaha  
Attorneys for Defendant  
NETFLIX, INC.

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